

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Smyrna Post Office
Smyrna, New York

Docket No. A2011-78

ORDER AFFIRMING DETERMINATION

(Issued January 11, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 21, 2011, Marie Whaley (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Smyrna, New York post office (Smyrna post office).² Between September 21, 2011 and October 19, 2011, five additional petitions seeking review were filed.³ After reviewing the Administrative Record in this proceeding, the Commission affirms the Final Determination to close the Smyrna post office.

II. PROCEDURAL HISTORY

On September 23, 2011, the Commission established Docket No. A2011-78 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On October 6, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Marie Whaley regarding the Smyrna, New York post office 13464,, September 21, 2011 (Petition).

³ Petitions for Review were received from Board of Trustees Village of Smyrna, September 22, 2011 (Board of Trustees Village of Smyrna Petition); Bernice O’Brien, October 13, 2011 (O’Brien Petition); Molly Khoury, October 13, 2011 (Molly Khoury Petition); Judi S. Clippinger, October 14, 2011 (Clippinger Petition); and Michael Khoury, October 19, 2011 (Michael Khoury Petition).

⁴ Order No. 867, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 23, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 6, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Smyrna, NY Post Office and Extend Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, November 15, 2011 (Postal Service Comments).

Two of Petitioners filed a Participant Statement supporting their petition.⁷ On December 22, 2011, the Public Representative filed comments⁸ together with a motion for late acceptance of comments.⁹

III. BACKGROUND

The Smyrna post office provides retail postal services and service to 89 post office box customers and 368 delivery customers. Final Determination at 2. The Smyrna post office, an EAS-13 level facility, has retail access hours of 8:00 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 11:00 a.m. on Saturday. Lobby access hours are 7:45 a.m. to 4:45 p.m., Monday through Friday, and 7:45 a.m. to 11:30 a.m. on Saturday. *Id.*

The postmaster position became vacant on May 10, 2008, when the Smyrna postmaster was reassigned. An officer-in-charge (OIC) was installed to operate the post office. Retail transactions averaged 31 transactions daily (34 minutes of retail workload). Office receipts for the last 3 years were \$ 43,051 in FY 2008; \$ 47,549 in FY 2009; and \$ 48,483 in FY 2010. There were no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$37,166 annually. *Id.* at 10.

⁷ Whaley Participant Statement Received from Marie Whaley, September 9,, 2011, Board of Trustees Participant Statement Received from Smyrna Village Board of Trustees, September 9, 2011 (Participant Statements).

⁸ Public Representative Comments Supporting Remand, December 22, 2011 (Public Representative Comments);

⁹ Motion of Public Representative for Late Acceptance of Comments, December 23, 2011. The Public Representative asserts late acceptance will not delay the proceeding and should not adversely affect any participants. No response to the motion has been filed. The motion is granted.

After the closure, retail services will be provided by the Sherburne post office located approximately 6 miles away.¹⁰ *Id.* at 2. Delivery service will be provided by rural carrier through the Sherburne post office. *Id.* The Sherburne post office is an EAS- 18 level office, with retail hours of 9:00 a.m.to 5:00 p.m., Monday through Friday, and 10:00 a.m. to 1:00 p.m. on Saturday. *Id.* 297 post office boxes are available. *Id.* The Postal Service will continue to use the Smyrna name and ZIP Code. *Id.* at 7, Concern No. 31.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioners oppose the closure of the Smyrna post office. They argue that the closure of the Smyrna post office is a hardship to the community; senior citizens are unable to travel the extra distance; and many residents are unable to afford the added expense of fuel. Whaley Participant Statement at 1; O'Brien Petition at 1. Some petitioners contend that the Smyrna community is active and home to many businesses, anticipate growth from the natural gas industry, and fear that local businesses will not be able to conduct daily business and will close without the post office. *See generally* Participant Statements at 1; Clippinger Petition at 1-2; Board of Trustees Village of Smyrna Petition at 2.

Petitioners question the closing of the Smyrna post office as opposed to nearby post offices. Michael and Molly Khoury Petitions at 1; O'Brien Petition at 2. Petitioners are concerned about traffic congestion and parking at the Sherburne post office. Clippinger Petition at 1. One petitioner believes the estimated economic savings are inaccurate. Clippinger Petition at 1-2. Lastly, one Petitioner claims that a rural carrier will not meet the needs of the community or provide efficient service. Whaley Participant Statement at 1.

¹⁰ MapQuest estimates the driving distance between the Smyrna and Sherburne post offices to be approximately 4.3 miles (6 minutes driving time).

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Smyrna post office. Postal Service Comments at 2. The Postal Service believes the appeal raises main issues: (1) the effect on postal services; (2) the impact on the Smyrna community; and (3) the economic savings expected to result from discontinuing the Smyrna post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes the determination to discontinue the Smyrna post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Smyrna post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

Id. at 4-5. The Postal Service contends that it will continue to provide regular and effective postal services to the Smyrna community when the Final Determination is implemented. *Id.* at 5.

The Postal Service also asserts that it has followed all statutorily required procedures and addresses the concerns raised by Petitioners regarding the effect on postal services, the effect on the Smyrna community, economic savings, and the effect on postal employees. *Id.* at 4-9.

Public Representative. The Public Representative concludes that it appears the Postal Service has followed proper procedures, but notes conflicting or inaccurate statements in the record regarding the provision of effective and regular service. The Public Representative further notes that Postal Service personnel have indicated delivery service from Sherburne would be provided while another explained roads must meet several Postal Service guidelines before being approved for delivery. Public Representative Comments at 2-3. The Public Representative says there is no

indication in this Administrative Record that suggests roads previously denied carrier service will meet the requirements and, citing similarities to the recent case involving Etna, New York,¹¹ recommends remand. *Id.* He also contends the Postal Service has ignored issues raised about the impact of closing of low income citizens in the community. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. *Id.* § 404(d)(4). A decision to close a post office may be

¹¹ Order No. 1067, Docket No. A2011-61, Order Remanding Determination, December 22, 2011.

appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On May 9, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Smyrna post office. Final Determination at 2. A total of 461 questionnaires were distributed and 194 were returned. *Id.* On May 19, 2011, the Postal Service held a community meeting at the Smyrna Methodist Church to address customer concerns. *Id.* Seventy-six customers attended. *Id.*

The Postal Service posted the proposal to close the Smyrna post office with an invitation for comments at the Smyrna and Sherburne post offices from June 4, 2011 through August 5, 2011. The Final Determination was posted at the same two post offices from September 9, 2011 through October 11, 2011. *Id.* at 1-2.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Smyrna is an incorporated community located in Chenango County, New York.¹² The community is administered politically by the Village Mayor. Final Determination at 1-2. Police protection is provided by the Chenango County Sheriff. Fire protection is provided by Smyrna Fire Department. The community is comprised of retirees, self-employed, and those who work in local businesses or

¹² Although the Final Determination, at 9, states Smyrna is unincorporated, Judi Clippinger, former mayor of the Village of Smyrna, asserts that Smyrna is incorporated. Clippinger Petition at 1.

commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Smyrna community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Smyrna post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 9-10.

Petitioners raise the issue of the effect of the closing on the Smyrna community. Petitioners argues that the Smyrna post office is vital to their community and local businesses and its loss will have an adverse effect on business activity in the community. Whaley Participant Statement at 1; Clippinger Petition at 2. The Postal Service contends that it considered these issues and explains that the community identity will be preserved by continuing the use of the Smyrna name and ZIP Code. Postal Service Comments at 10. Further, the Postal Service asserts that it will continue to provide regular and effective postal services to all residents of Smyrna. *Id.* To support its position, questionnaire responses indicated that customers would continue to use local businesses if the Smyrna post office closed. *Id.* at 10-11.

The Postal Service has adequately taken the effect of the post office closing on the community into account.

Effect on employees. The Postal Service states that the Smyrna postmaster was reassigned on May 10, 2008, and that an OIC has operated the Smyrna post office since then. *Id.* at 2 ; Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.* The Postal Service has considered the possible effects of the post office closing on the OIC when it stated that the OIC may be reassigned or separated. The Postal Service

has considered the effect of the closing on employees at the Smyrna post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Smyrna customers. Postal Service Comments at 5. The Postal Service asserts that customers of the closed Smyrna post office may obtain retail services at the Sherburne post office located 6 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Sherburne post office. The 89 post office box customers may obtain Post Office Box service at the Sherburne post office, which has 297 boxes available. *Id.*

Petitioners argue that traveling to another post office is an additional financial burden on residents. It places a hardship and difficulty on senior citizens because many are unable to travel the added distance and do not have internet access to conduct postal transactions. Whaley Participant Statement at 1; Village Board of Trustees Participant Statement at 1. Petitioner Clippinger is very concerned with the limited parking available at the Sherburne post office and the ease of access to the post office. Clippinger Petition at 1. She also expressed concerns about the security of the mail and the timeliness of delivery after the closure of the Smyrna post office. *Id.* at 2. The Postal Service responds by asserting the Postal Service will deliver to a mailbox located on the road if it has been safely installed and meets the required guidelines thereby eliminating the need for senior citizens to travel to the Sherburne post office because a rural carrier provides the same services as the post office. Postal Service Comments at 6. The Postal Service also notes that internet service is not required and most services do not require meeting the carrier at the mailbox. *Id.* at 7. The Postal Service challenges the assertion that there is limited parking. *Id.* A site study was conducted and it was determined that there is ample parking in the Sherburne post office parking lot with a designated entrance and exit as compared to on-street parking at the Smyrna post office. *Id.* at 7-8.

The Postal Service responds to Petitioners' concerns about mail security by stating that customers may place a lock on their mailboxes as a security measure. *Id.*

at 8. Also, the Postal Service carefully considers the volume of mail of its customers and delivers the greatest amount of mail at the earliest possible hour. *Id.* at 6. The Postal Service also stated that carrier service will be able to accommodate future growth in the community. Final Determination at 10, Concern No. 10.

The Public Representative is concerned that promised rural route delivery may not be available if a roadway in the narrow streets of Smyrna is not approved for delivery. Public Representative Comments at 2-3. The Postal Service's general requirements for approval of roadside delivery are addressed in the Final Determination and are available to the Petitioners. Final Determination at 5, Concern No. 20. Although some Smyrna streets may be narrow or dead ends, the Administrative Record does not indicate delivery has previously been denied or that it will be denied to any customers who may expect delivery from the rural route upon closing the Smyrna post office. Furthermore, no Petitioner has expressed concern about not receiving delivery, if requested.

The Postal Service has considered and responded to the issues raised by customers concerning effective and regular service.

Economic savings. The Postal Service estimates total annual savings of \$37,166. Final Determination at 10. It derives this figure by summing the following costs: postmaster salary and benefits (\$ 48,569) and annual lease costs (\$ 8,900), minus the cost of replacement service (\$ 20,303). *Id.*

Petitioner Clippinger asserts that the estimated savings are inaccurate. Clippinger Petition at 1-2. She notes that the amounts saved are based on the salary and benefits of a postmaster rather than the OIC, who receives a lower salary and no benefits. *Id.* The Postal Service responds that discontinuing the Smyrna post office would eliminate a permanent career position. Postal Service Comments at 11.

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs that are not eliminated by the discontinuance of a post office. The Smyrna post office postmaster was reassigned on May 10, 2008. Final Determination at 2. The office has since been run by a career OIC

who, upon discontinuance of the post office, will return to her duties at a nearby post office. Postal Service Comments at 10. The postmaster position and the corresponding salary will be eliminated. See Postal Service Comments at 11 (“[I]t [is] appropriate to use a career Postmaster’s salary in the calculation because the career position would have ultimately been filled if the Smyrna Post Office had not been identified as a candidate for discontinuance.”). Furthermore, notwithstanding that the Smyrna post office has been staffed by an OIC for more than 2 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service’s determination to close the Smyrna post office is affirmed.

It is ordered:

The Postal Service’s determination to close the Smyrna, New York post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Smyrna post office has been operated by an officer-in-charge (OIC) since the former postmaster was reassigned in May 2008.

On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal; yet on the other hand, it argues that the savings should be calculated using a full-time position.

There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Postal Regulatory Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

There is also some question as to whether the promised rural route delivery will actually materialize given the narrow streets in Smyrna and the requirements for approval of roadside delivery. If customers are thereby unable to receive rural route delivery, the promised alternative to the Smyrna post office, it is not apparent that they will be receiving adequate postal service.

The Commission has recently issued its Advisory Opinion in Docket No. N2011-1, pointing to the fact that its closing plans do not optimize the network. In

the case of Smyrna, the failure to undertake actual retail network optimization is exhibited by the Postal Service selecting for closure a post office with strong revenue that actually increased each year from 2008 to 2010. This proposed closing should be reconsidered in this light as well.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process but had not yet received a discontinuance notice by December 12, 2011 have the respite of a 5-month moratorium.

The citizens of Smyrna, New York and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION BY VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider all requirements of 39 U.S.C. § 404(d).

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since May 2008, not an EAS-13 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Postal Service's decision to discontinue operations at the Smyrna post office is unsupported by evidence on the Administrative Record and thus, should be remanded.

Nanci E. Langley